

REPORT OF PROCEEDINGS OF THE CONFERENCE.

making it absolutely obligatory on the masters of vessels, after collision, to stand by? The only difference is that our law, unlike all continental laws, presumes that the master who did not stand by is responsible for the collision—not responsible for not standing by, but responsible for the collision. Now, that law is not in existence in any of the continental codes.

SIR WILLIAM LYNE: That just proves what I am afraid of, that you are wanting to take away a part of the punishment—the direct expression of part of the punishment. The last subsection 3 provides that if a master or person in charge fails without reasonable cause to comply with this section, he shall be guilty of a misdemeanour.

MR. NORMAN HILL: That stands.

THE CHAIRMAN: That would not be affected in the slightest degree.

MR. NORMAN HILL: This convention is the work of a great many years. There have been very great difficulties in getting foreign countries to adopt our provisions, and substantially we have got foreign countries on these two matters, collision and salvage, to adopt the law of the United Kingdom, and so far as I know, the law of the United Kingdom is the law which has been in force in Australia and New Zealand. We have made a very great step forward in getting foreign countries to go with us on these points.

SIR WILLIAM LYNE: Have you not reduced your stringency?—I am seeking rather for information as to what the effect is.

MR. NORMAN HILL: The other particular which has been specially mentioned is another example. Our law is, that if two vessels are both to blame, each vessel pays half the damage of the other, without regard to the degree of blame. Now the continental practice generally has been to apportion the damage according to the degree of blame. One ship may be very much to blame, and the courts have been in the habit of apportioning the damage, one ship to pay one-sixth, say, and the other five-sixths. We have always said half, and on that point we have agreed to take the continental practice rather than ours. With regard to this question of standing by, it is a kind of compromise between our practice and the continental practice. We insist on the obligation to stand by, and we have provided for punishment if the master does not stand by; but we have agreed that the fact of not standing by is not to be a presumption that the vessel which elects not to stand by was to blame for the collision. It is a very arbitrary rule to say that because you do not stand by after the collision you were responsible for bringing about the collision. As a matter of fact, it is a very difficult rule to support. It has been our rule, but it has been the rule of no other nation, and we think that in getting them to toe the line, in so far as imposing a direct responsibility to stand by is concerned, we have made a very substantial step.

SIR WILLIAM LYNE: What punishment devolves upon them if they do not stand by?

HON. DUGALD THOMSON: The master is punished.

THE CHAIRMAN: It is still a misdemeanour. If you look at the first page of this you will find that article 8 is inconsistent with subsection 2 of the section which you quoted No. 422, but not with subsection 3. If you look at the front page you will find that the convention provides for the repeal of subsection 2 of Section 422, but the section which you quote, making the person who fails to stand by guilty of a misdemeanour, remains. He is still guilty of a crime if he does not stand by, and he will be punished accordingly.

HON. DUGALD THOMSON: The person who neglects to stand by is punishable as much as he is punishable under the other law.

THE CHAIRMAN: That is so.

HON. DUGALD THOMSON: But it does not cause the implication that the collision was the fault of his ship when it may not have been.

MR. FERNIE: The underwriters would not be responsible.

THE CHAIRMAN: The underwriters certainly would not be responsible.

SIR JOSEPH WARD: Is there any reason why the second line should not be deleted: "the owner of the ship is not liable by reason of the contravention of the above provisions"? That suggests that he incurs no penalty, and that is going too far. If that were struck out, it would read: "such contraventions do not entail a legal presumption of fault from the point of view of pecuniary liability for the collision"; there is a conflict between the two.

MR. NORMAN HILL: Is not the object of 9 (2) to maintain the right to punish your own officers for breaking the laws you lay down? The object of 8 is to provide for collisions with regard to vessels under different flags.

SIR JOSEPH WARD: In our Act the subsection reads: "if the master or person in charge fails, without reasonable cause, to comply with this section, he shall be guilty of a crime." Then if he is the owner and master too—we have such cases—it goes on, "and the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act or default," and his certificate may be suspended. If you strike out "the owner of the ship is not liable by reason of contraventions of the above provisions," and leave this in, "such contraventions do not either entail a legal presumption of fault from the point of view of pecuniary liability for the collision," I think you do all you want.

MR. LLEWELLYN SMITH: I am afraid we are not in a position to amend this. This is a compromise arrived at at the International Conference, which was as far as we could get foreign countries to go. We are in a position, all of us—the Imperial Government and the Colonial Governments—to consider whether, taking it as a whole, it would be better to come in or not. It has rather got beyond the stage at which we could have verbal amendments.

SIR WILLIAM LYNE: Then what is the use of our considering it?

MR. LLEWELLYN SMITH: We were considering whether Australia would be benefited by participation.

SIR WILLIAM LYNE: Suppose Australia says she does not want it?

MR. LLEWELLYN SMITH: Then she will not accept.

SIR JOSEPH WARD: Speaking for New Zealand, before we could be expected to give our general consent to a proposal of the kind, obviously we ought to have been asked beforehand, and as we were not asked beforehand, this is the opportunity. We have never limited our Act in any way.

MR. LLEWELLYN SMITH: The Colonial Governments have all had it.

THE CHAIRMAN: I am told there has been a reply from New Zealand.

MR. HOWELL: Perhaps I could tell the Conference exactly what has happened. As regards the Colonies, the position is as follows: So far as the Colonies not possessing responsible government are concerned, the Colonial Office are prepared to accept any course which the Board of Trade may advise. The self-governing Colonies have expressed themselves as follows: Newfoundland see no objection to the Convention if accepted. Natal agree to whatever action may be decided upon by the Imperial Government. Cape Colony see no objection to the adoption of the conventions which are approved generally by the mercantile association, whose views have been sought in the matter. New Zealand refer to certain points in the collisions convention, Article 8, which they say would have to be considered in drafting legislation to give effect to the convention, but do not say whether they favour adoption of the conventions or not.

MR. LLEWELLYN SMITH: Australia's reply was that it was a suitable subject to be brought up before this Conference, and that is why it was done.

SIR JOSEPH WARD: I would like the other members who are here not to assume too much. Generally, I am quite prepared to fall in with such portions of that as are referred to in the despatch, whatever they may be; but that, of course, does not mean our legislating to put an owner or shipmaster who may be on a ship in the position of being relieved from all responsibility.